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In re Application of
TEMPLE, Kit
Application No.: 10/541,090
PCT No.: PCT/EP03/51065
Int. Filing Date: 18 December 2003
Priority Date: 30 December 2002
Attorney's Docket No.: 884A.0119.U1(US)
For: DISTRIBUTING CONTENT DATA

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DECISION ON
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RENEWED PETITION
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UNDER 37 CFR 1.47(b)
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This is a decision on applicant's "Renewed Petition Under 37 C.F.R. 1.47(b)," filed in the United States Patent and Trademark Office on 11 June 2007 on behalf of the assignee and the non-signing inventor Kit Temple.

BACKGROUND

On 18 December 2003, applicant filed international application PCT/EP03/51065, claiming a priority date of 30 December 2002. The thirty-month period for paying the basic national fee in the United States expired at midnight on 30 June 2005.

On 29 June 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee.

On 13 December 2005, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration were required.

On 14 April 2006, applicant submitted the declaration, the surcharge for late filing of the declaration, a two-month extension fee, a petition under 37 CFR 1.47(b) requesting acceptance of the application without the signature of the applicant and, a "Statement of Facts" to support the petition including, a declaration by Mr. James Seymour, copies of the letters mailed to inventor Kit Temple and, a statement by Ms. Becky Green, a Human Resources administrator, regarding the employment period of inventor Kit Temple with Nokia (UK) Ltd.

On 18 September 2006, the Office dismissed applicant's petition because the "Statement of Facts" in support of the petition was found lacking in firsthand knowledge of the facts recited therein. The decision further indicated that applicant had not provided evidence of proprietary interest in the application as required under 37 CFR 1.47(b).

On 20 November 2006 applicant filed a renewed petition under 37 CFR 1.147(b) requesting acceptance of the application without the signature of inventor Kit Temple, a declaration by Mr. James Seymour that inventor Kit Temple was employed by Nokia (UK) Ltd. when the claimed invention of the instant application was made and a copy of inventor Kit Temple's employment agreement.

On 17 April 2007, the Office mailed "Decision on Petition under 37 CFR 1.47(b)" dismissing applicants' petition without prejudice. The Decision stated that the evidence provided does not support the conclusion that Mr. James Seymour has firsthand knowledge that Mr. Kit Temple refuses to execute the declaration or cannot be reached after a diligent effort and that, the invention was made by Mr. Kit Temple while employed by the 37 CFR 1.47(b) applicant.

On 11 June 2007, applicant filed the instant renewed petition under 37 CFR 1.147(b) on behalf of the assignee and the non-signing inventor Kit Temple including, a declaration by Ms. Angela Brain and, a copy of an "NOKIA Invention Report" dated July 17, 2002 and signed by Mr. Kit Temple.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

With the filing of applicant's renewed petition, applicant has satisfied items (1) through (6) above. Specifically, the declaration of Ms. Angela Brain is a statement by a person having firsthand knowledge that a copy of the application papers was presented to non-signing inventor Kit Temple. Also, the copy of the "NOKIA Invention Report," which bears the signature of Mr. Kit Temple and is dated 17 July 2002, together with the declaration of Mr. James Seymour and the statement of Ms. Becky Green, filed 14 April 2006, are sufficient evidence to show that the invention described in the instant application was made by Mr. Kit Temple while employed by the 37 CFR 1.47(b) applicant.

Hence, based on the totality of the evidence currently of record, it is appropriate to consider the requirements of 37 CFR 1.47(b) to have been satisfied.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.47(b) is GRANTED.

This application has an International Filing Date of 18 December 2003 and a date under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) of 14 April 2006.


This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

As provided in 37 CFR 1.47(b), a notice of the filing of this application will be forwarded to the non-signing inventors at their last known address of record.

A notice of the filing of the application under 37 CFR 1.47(b) will be published in the Official Gazette.



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